

**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE AT MYSURU**

Dated this the 5th day of January, 2021

PRESENT

Sri. Ramachandra D. Huddar, B.Com., LL.M.,
Prl. District & Sessions Judge,
Mysuru.

COM. O.S. No.131/2020

Plaintiff:

M/s. PCP Electronic Pvt. Ltd.,
No.191, Hebbal Industrial Area,
Mysuru, by its Director Smt.Manju
Prasad W/o P.C.Prasad.

(By Sri. Goutham Chand, Advocate)

Vs.

Defendants:

1. Yashas Electronics, No.68/A, (next to Marc Batteries) Hootagalli Industrial Area, Mysuru, by its Proprietrix Smt.Leelavathi B. W/o H.V.Somashekar, aged about 45 years,
2. Yashas Atreya S. S/o H.V.Somashekar, aged about 24 years, (residing with 1st defendant)
3. B.Vanajakshi W/o Late Narayan, aged about 49 years, Working at Shanthaveri Gopalagowda Memorial Hospital, T.Narasipura Main Road, Mysuru - 570 010.

(By Sri.J.N.Parashivamurthy, Advocate)

IN I.A.NO.4 of 2020

Applicant: Leelavathi.B. 1st defendant.

Vs.

Opponent: M/s. PCP Electronic Pvt. Ltd.,
represented by its Director
Manjuprasad. plaintiff.

ORDERS ON I.A.NO.4

Defendant No.1 being the applicant to this application has filed the same to reject the plaint, by invoking the provisions of Order 7 Rule 11(a) and (d) of C.P.C., stating that, the plaint does not disclose the cause of action and the suit is apparently barred by law.

2. Along with this application, the 1st defendant being the Proprietrix of the defendant No.1 Yashas Electronics, has filed an affidavit stating that, a false and frivolous suit has been filed by the plaintiff for recovery of money and possession of the machinery in relation to the suit schedule property. It is stated that, the suit of the plaintiff is hopelessly barred by law. There is no proper representation of the plaintiff-Company. The provisions of Section 12-A of the Commercial Courts Act have not been followed. It is compulsory before initiating the suit to approach for mediation. There is no cause of action at all. There is no written agreement between the plaintiff or the real previous owner of the machinery i.e. P.C.Prasad and defendant No.1. The cause of action is dead. The previous owner of the machinery i.e.

P.C.Prasad kept mum from 12.05.2018 and suddenly issued a letter to the defendant No.1 dated 07.03.2020, so also issued legal notice on 20.03.2020 reiterating the version of the facts so addressed by him in the letter dated 07.03.2020. As the plaint of the plaintiff does not disclose cause of action and hopelessly barred by law, it is prayed to reject the plaint.

3. It is further stated in the affidavit that, the contents of the written statement be read as part and parcel of this affidavit.

4. Copy of this interim application is served upon the plaintiff. The plaintiff filed the objections to this application denying the entire assertions made in the application.

5. It is contended that, suit is properly represented and before instituting the suit, as the plaintiff has sought the urgent relief, therefore Section 12-A of the Commercial Courts Act has no application. It is contended that, the defendants became defaulters in payment of EMI amount and there is a clear disclosure of the cause of action in the plaint. Therefore, as the plaintiff is one of the Director of the Company, by showing the cause of action, the suit is filed by the plaintiff for recovery of money. It is denied that, the plaintiff suddenly caused a letter on 07.03.2020 etc. It is contended that, the defendant has not sent any reply to the said letter, which amounts to admission. To the notice dated 20.03.2020, reply was sent by the defendants nearly after 2 months i.e. on 29.05.2020 with untenable and utterly false allegations. Entire contents of the affidavit are denied by the plaintiff. It is prayed to dismiss the application.

6. Both the counsels for plaintiff and defendants have filed their respective written submissions.

7. Heard the arguments of learned counsel for the defendants and plaintiff on this application at length. Meticulously perused the records as well as written submissions of both the side.

8. During the course of arguments, the learned counsel for the defendants submit before the Court that, it is the suit for recovery of money filed by person who is not properly represented. Suit is bad in law. Without any cause of action, this suit is filed. Therefore, it is submitted by the counsel for the defendants that, rightly the defendants have moved this interim application.

9. Whereas, in this case, the counsel for the plaintiff relying upon his written submissions submits that, on reading the entire text of the plaint, it discloses the cause of action, therefore the untenable application has been filed by the defendants.

10. I have given my anxious consideration to the arguments of both the sides.

11. On meticulous reading of entire records of this case and also in view of the rival submissions of both the sides, the following points would arise for my consideration:

1. Whether applicant/defendant No.1 has made out grounds to reject the plaint of the plaintiff ?

2. What order ?

12. My answers to the above points are as under:

Point No.1 :: In the **Negative**,

Point No.2 :: As per final order, for the following:

REASONS

13. **Point No.1:**

On reading the plaint averments, plaintiff has filed this suit against the defendants directing the defendants to put the plaintiff in possession of the machineries which are in the custody of the defendants having been taken by the defendants in the month of May 2018 belongs to plaintiff and kept in the schedule premises and details of the machineries as stated in the schedule mentioned in the plaint, so also for recovery of Rs.35,05,000/- due as on the date of the suit.

14. It is stated by the plaintiff throughout the plaint that, plaintiff was running the Industry under the name and style of "*PCP Electronic Pvt. Ltd.*" at No.191, Hebbal Industrial Area, Mysuru since 2008. The plaintiff-Company used to get the machinery imported as specified in the schedule. Due to certain circumstances, the plaintiff stopped the production and closed the said Company in the month of March 2017. The plaintiff-Company was supplying the material to various Companies and at the commencement of the business, machinery were imported from Singapore and other Countries.

15. It is stated in the plaint that, the 1st defendant being the Proprietrix of the Firm which was established on 17.07.2017, she was working with the plaintiff-Firm and was known to the plaintiff

since many years. As the plaintiff closed down the establishment, therefore, the defendants purchased the said machineries mentioned in the schedule and were liable to pay the sale proceeds to the plaintiff at a monthly instalment of Rs.2,00,000/- for a period of 5 years commencing from July 2018. But, defendants became the defaulters. The defendants upto February 2020, due to pay Rs.40,00,000/- i.e. 20 months instalments. Though there was request made by the plaintiff to pay the same, but defendants have not paid the same. Therefore, the plaintiff has issued the letter as well as the legal notice. But, defendants have given untenable reply to the legal notice. The EMI amount due as on date of suit is Rs.40,00,000/-. The defendants are evading to pay the amount. Therefore, in Para-10 of the plaint, it is stated that, the cause of action for the suit arose within the jurisdiction of this Court where the plaintiff and defendants agreed for sale of the machineries to the defendants in May 2018 and EMI was payable from August 2018 and when letter was addressed on 07.03.2010 and when notice was issued on 20.03.2020 and subsequently within the jurisdiction of this Court. That means, as the defendants have not paid the money inspite of receipt of the notice and letter, therefore, the plaintiff is constrained to file the suit and cause of action has been shown in Para-10 of the plaint.

16. Now, the only serious contention of the defendants is that, the plaint does not disclose the cause of action and it is barred by law. Therefore, the plaint is not at all maintainable and is liable to be rejected. With regard to the possession of some

machineries as mentioned in the written statement, there is no dispute as such. According to the defendants, as per the quotation, there is a purchase of the machineries and defendants are not due to pay any amount. In lieu of the PF amount due to the defendant No.1, the defendant No.1 has received the said machineries worth Rs.34,17,480/-. That means, defendant No.1 was working with the plaintiff-Company and as defendant No.1 was entitled for the PF, salary and other amount, therefore, the plaintiff has given the said machineries. Therefore, as the plaintiff was liable to pay the said amount, the machineries have been given to the defendant No.1. That means, there is no purchase of the said machineries by the defendant No.1 as stated in the plaint. The other allegations so stated in the plaint have been denied. There was no liability to pay the instalments at the rate of Rs.2,00,000/- for a period of 5 years as stated by the plaintiff. It is further contended that, the suit itself is untenable.

17. One more contention has been taken by the defendants that, there was an agreement to arrange the marriage of 2nd defendant who is the son of 1st defendant with the daughter of plaintiff. As there was denial by the defendants, therefore, a suit is designed by the plaintiff.

18. On reading the written statement, there were repetition of so many factual features. A lengthy written statement has been filed and it is stated that, in the written statement the particulars of 8 machineries have been mentioned and defendants are not

in possession of 13 machineries as stated by the plaintiff. The said machineries and other furnitures belong to defendants.

19. As in this case, the defendants have sought the relief to reject the plaint, we have to read the provisions of Order 7 Rule 11 of C.P.C. in proper perspective. The said provision of law reads as under:

11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

20. In the written arguments, the counsel for the plaintiff has reiterated the plaint averments, so also relies upon the provisions of the Commercial Courts Act, 2015.

21. So far as object of the Commercial Courts Act is concerned, this Commercial Courts Act has to be read along with the amended provisions of C.P.C. which are applicable to the Commercial Courts to ensure that there is no unreasonable delay in the disposal of the commercial suits. The provisions of C.P.C. are applicable to the suits being filed under the provisions of the Commercial Courts Act.

22. The counsel for the defendants relied upon the provisions of Section 12-A of the Commercial Courts Act, wherein it shows that, it is mandatory to refer the dispute to the mediation for settlement. That means, under Section 12-A of the Commercial Courts Act, a suit which is going to be filed unless there is a urgent relief being claimed by the plaintiff, such suit shall not be instituted unless the plaintiff exhausts the remedy of preinstitution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government. In this case, the plaintiff has sought the interim relief and has sought an attachment order before judgment. Court has considered the same and I.A.No.1 came to be allowed and attachment order before judgment of the properties mentioned in the schedule has been issued by the Court. The said interim order is operating till this day. It is extended from time to time. So, when urgent relief has been claimed by the plaintiff, therefore, the provisions of 12-A of the Commercial Courts Act that the plaintiff has to exhaust the remedy of preinstitution mediation does not arise at all. Therefore, the

submission of the counsel for the defendants cannot be accepted.

23. It is contended by the counsel for defendants that, there is no commercial dispute between the plaintiff and defendants and the provisions of Commercial Courts Act has no application. The counsel for the plaintiff submits that, there is a business between plaintiff and defendants and defendants purchased the machineries of the plaintiff as the plaintiff closed down the business because of some circumstances. Defendant No.1 agreed to pay the sale proceeds in the monthly instalments at the rate of Rs.2,00,000/-. But, defendants deny the same. The plaintiff has shown the cause of action. That means, the plaintiff being the owner of the said machineries as per the say of the plaintiff, has sold the machineries in favour of defendant No.1. That means, there is a trade between plaintiff and defendants. That means, a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, it includes the definition of wholesale or retail merchant, commission agent, broker, manufacturer, contractor, factory owner etc. Here, the plaintiff is a factory owner as per the say of the plaintiff. That means, there is a trade between plaintiff and defendant No.1 and now the defendants cannot contend at this stage that, the suit of the plaintiff is hopelessly barred by law. The provisions of the Karnataka Money Lenders' Act have application to the present facts of this case. Therefore, the argument of the counsel for defendants cannot be accepted.

24. It is the serious contention of the defendants that, the plaint of the plaintiff do not disclose the cause of action. As narrated in the foregoing Paras, in Para-10 of the plaint, the plaintiff has stated about the cause of action. It is a settled principle of law that, a cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated, but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence.

25. The law is that, whether a plaint discloses a cause of action or not is essentially a question of fact. But, whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed. In ascertaining whether the plaint shows a cause of action, the Court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown. So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings

to disclose a cause of action is distinct from the absence of full particulars.

26. It may be true that, Order 7 Rule 11(a) although authorizes the Court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit. Furthermore, a fact which is within the special knowledge of the defendant need not be pleaded in the plaint.

27. In the instant case, if these principles are applied to the present facts of the case, whether the plaint discloses a cause of action or not, as cause of action is a bundle of facts, a question which is to be determined in this case is, whether by reading the averments made in the plaint in their entirety, whether it discloses a cause of action? Plaintiff has produced voluminous documents to show about the transaction between plaintiff and defendants. That means, if averments made in the plaint and documents so relied upon by the plaintiff are perused, on reading the same, it discloses the cause of action. That means, plaint should not be rejected merely on the ground that averments are not sufficient and documents also have to be taken into consideration. Various contentions have been taken by the defendants in this case with regard to the non-disclosure of the cause of action etc. So, in the considered view of this Court, on

reading the provisions of Order 7 Rule 11 of C.P.C., it is a legal position that, defendant may take up such a contention in the written statement stating that the plaint does not disclose the cause of action. But, it does not mean that, the same has to be decided only by way of an application under Order 7 Rule 11 of C.P.C., which may amount to prejudging the matter. Here, the question of law and facts are involved to be decided by the Court. Merely because the defendants filed an application to reject the plaint stating that there is no cause of action to file the suit etc., it will not help the case of the defendants in any manner.

28. In a Judgment of the Hon'ble Supreme Court of India reported in **(2018) 11 Supreme Court Cases Page-780**, in a case between ***Sejal Glass Limited Vs. Navilan Merchants Private Limited***, the Hon'ble Supreme Court of India held with regard to the provisions of Order 7 Rule 11 of C.P.C. as under:

A. Civil Procedure Code, 1908 - Or. 7 Rule 11 and Or. 6 R.16 - Relative scope and applicability - It is only where plaint as a whole did not disclose cause of action, Or. 7 R. 11(a) is applicable and it stops continuation of suit - If conditions mentioned under Or. 7 R. 11 are fulfilled, entire plaint has to be rejected - However, where it appears that plaint cannot be proceeded with in some part but it can be proceeded in another part, Or. 7 R. 11 has no application - Suit as a whole must proceed to trial - Under this sort of conditions, Or. 6 R. 16 meant for striking down of pleadings may be applicable, as per its terms

- Dispute arising under Commercial Courts Act, 2015 - Respondent-plaintiff had claimed certain remedies against appellant-defendant and its Directors - Application under Or. 7 R. 11 filed

seeking rejection of plaint for not disclosing cause of action - Dealing with this application, it was observed in the impugned judgment that plaint could be divided into two parts - First, that plaint did not disclose cause of action against Directors of appellant-defendant - Therefore, plaint stood rejected against them - In second part, it was observed that plaint disclosed cause of action against appellant-defendant and hence trial was continued - Further observed that appellant-defendant took inordinate time to file written statement, hence it was barred from filing written statement

- On facts held, Or. 6 R. 16 not applicable to facts of present case as there is no plea or averment to the effect that, as against the Directors, pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the court - As appellant-defendant was barred from filing written statement, eight weeks' time granted to it for filing written statement - Civil Procedure Code, 1889, S. 54 (now corresponding to Or. 7 R. 11)

29. If the principles laid down in the aforesaid Judgment are applied to the present facts of this case, while dealing with the application for rejection of the plaint, it was observed in the said Judgment that, the plaint could be divided into two parts etc. Plaint has to be rejected as a whole. But here, the provisions of Order 6 Rule 16 of C.P.C. have no application and averments have to be taken into consideration in its entirety along with the documents produced by the plaintiff. No other documents have been filed by the defendants to buttress their defence. Therefore, in view of the provisions of Order 7 Rule 11 of C.P.C. and also the averments made by the plaintiff in the plaint and the documents

relied upon by the plaintiff, it shows about the cause of action to file the suit against the defendants for recovery of the money and also possession of the said machineries. The defence of the defendants has to be considered during the course of regular trial. Now, we cannot prejudge the dispute between the plaintiff and defendants and say that the plaint does not disclose the cause of action. Therefore, if all these factual features coupled with the legal position of Order 7 Rule 11 of C.P.C. are applied to the present facts of this case, the I.A.No.4 so filed by the defendants is devoid of any merits and is liable to be dismissed. Hence, I record my finding on above **point No.1** in the **negative**.

30. **Point No.2:**

Resultantly, I pass the following:

ORDER

I.A.No.4 filed by the defendant No.1 under Order 7 Rule 11(a) and (d) of C.P.C. is dismissed, with no orders as to cost.

(Dictated to the Judgment Writer, transcribed by her and after corrections, signed and then pronounced by me in open Court on this the **5th day of January, 2021**)

(Ramachandra D. Huddar)
Prl. District & Sessions Judge,
Mysuru.

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